

**CHAPTER NO. 1095**

**SENATE BILL NO. 2834**

**By Ford**

Substituted for: House Bill No. 2719

By Bowers, Miller, John DeBerry, Pruitt, Ulysses Jones, Langster, Cooper

AN ACT To amend Tennessee Code Annotated, Title 36, Chapter 6, Part 1, relative to determination of custody of minor children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-6-101(a), is amended by adding the following as a new subdivision:

(4) Notwithstanding any common law presumption to the contrary, a finding under §36-6-106(8), that child abuse, [as defined in §§39-15-401 or 39-15-402], or child sexual abuse, [as defined in §37-1-602], has occurred within the family shall give rise to a rebuttable presumption that it is detrimental to the child and not in the best interests of the child to award sole custody, joint legal or joint physical custody to the perpetrator of such abuse.

SECTION 2. Tennessee Code Annotated, Section 36-6-106(3), is amended by deleting the punctuation “;” at the end of the item and by substituting instead the following:

provided, that where there is a finding, under §36-6-106(8), of child abuse, [as defined in §§39-15-401 or 39-15-402], or child sexual abuse, [as defined in §37-1-602], by one (1) parent, and that a non-perpetrating parent has relocated in order to flee the perpetrating parent, that such relocation shall not weigh against an award of custody;

SECTION 3. Tennessee Code Annotated, Section 36-6-106(8), is amended by deleting the language “; and ” at the end of the item and by substituting instead the following:

provided, that where there are allegations that one (1) parent has committed child abuse, [as defined in §§39-15-401 or 39-15-402], or child sexual abuse, [as defined in §37-1-602], against a family member, the court shall consider all evidence relevant to the physical and emotional safety of the child, and determine, by a clear preponderance of the evidence, whether such abuse has occurred. The court shall include in its decision a written finding of all evidence, and all findings of facts connected thereto. In addition, the court shall, where appropriate, refer any issues of abuse to the juvenile court for further proceedings; and

SECTION 4. Tennessee Code Annotated, Section 36-6-107, is amended by designating the existing language of the section as subsection (a) and by adding the following as a new subsection (b):

(b) Where the court makes findings of child abuse or child sexual abuse under § 36-6-106(8), the court may only award visitation under circumstances

that guarantee the safety of the child. In order to guarantee the safety of the child, the court may order:

(1) That all visits be supervised by a responsible adult or agency, the costs to be primarily borne by the perpetrating parent;

(2) That the perpetrating parent attend and complete a program of counseling or other intervention as a precondition to visitation;

(3) That overnight visitation be prohibited until such time that the perpetrating parent has completed court ordered counseling or intervention, or otherwise demonstrated a change in circumstances that guarantees the safety of the child;


(4) That the address of the child and the non-perpetrating parent be kept confidential; and

(5) Any other conditions the court deems necessary and proper to guarantee the safety of the child.

SECTION 5. This act shall take effect July 1, 1998, the public welfare requiring it.

**PASSED: May 1, 1998**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 19<sup>th</sup> day of May 1998**

  
DON SUNDQUIST, GOVERNOR